

HUMAN SERVICES BOARD

INTRODUCTION

In a previous Recommendation dated March 12, 2002 the hearing officer found that the petitioner had alleged that natural gas was the primary heating source for his apartment. At a meeting of the Board on April 10, 2002, at which the petitioner participated by phone, the petitioner alleged that he had primarily used electric heat to heat his home last winter. Since this could have made a difference under the tables in determining the petitioner's eligibility for Fuel Assistance, by Order dated April 12, 2002 the Board remanded the matter for the Department to reconsider its prior decision

in light of the petitioner's allegations and for further hearing to consider the Department's decision.

On April 16, 2002 the Department notified the hearing officer and the petitioner that it would not reconsider the petitioner's application for Fuel Assistance based on the fact that the petitioner's new allegations regarding his primary heat source had come after the deadline for taking applications for the 2001-2002 heating season.

The hearing officer then held a telephone hearing on May 1, 2002. At that time the hearing officer instructed the petitioner to submit copies of his gas and electric bills for the winter. The petitioner did so on May 27, 2002. In Memorandums dated June 17 and July 23, 2002 the hearing officer requested the petitioner to furnish information regarding his electric usage in summer, so that this could be compared to the petitioner's winter usage. The petitioner furnished this information on July 29, 2002. Based on this information and the representations of the petitioner at the hearing on May 1, 2002, the following additional findings of fact are made.

1. The petitioner has gross income from Social Security of \$678 a month. His rent is subsidized through the "Section 8" program which requires him to pay \$54 per month to the

landlord. (The market rent on the apartment is \$725 per month, although the petitioner maintains that the landlord has inflated this amount in order to receive a larger Section 8 payment.) The petitioner is required to pay his own utilities.

2. The petitioner made a timely application for heating fuel assistance with the Department of PATH and was informed by a notice dated December 24, 2001 that he would not be eligible because his estimated heating cost is less than the allowed minimum heating cost to be eligible for assistance.

3. The Department determined that the petitioner's income made him income eligible for the program. (The maximum allowable income is \$895 a month.) However, relying on tables in its regulations, the Department determined that the petitioner would have an annual heating cost of \$412 during the heating season. The Department further determined based on tables that the petitioner had been allotted \$312 per year by the "Section 8" program to pay for his heating costs.¹ This "subsidy" was subtracted from the petitioner's annual

¹ This \$312 figure represents the amount by which the petitioner's annual rent obligation to his landlord was reduced by Section 8 because utilities are not included in the petitioner's rent. If the landlord had provided utilities, the petitioner would have been required to pay \$26 more per month as his portion of the rent. The housing authority pays the landlord the difference between the market value of the apartment and the petitioner's share.

heating costs and he was found to have only \$100 in uncovered heating costs. Because this amount was less than the \$125 minimum that is allowed under the regulations (see infra), the petitioner was determined to be ineligible.

4. The petitioner appealed this determination because his actual heating costs are far greater than those allowed in the tables. This is due in large part to the facts that his apartment is difficult to heat and that he is home all day because he is disabled.

5. The petitioner moved into his present apartment on November 1, 2001. He had no prior knowledge or experience as to the efficiency of the apartment's heating sources. The apartment was equipped with a gas furnace, which the petitioner was told was the primary heating source. There were additional electric heaters in the bedroom.

6. When or shortly after he moved in, the petitioner found the gas furnace to be inoperable. It was not repaired until six weeks after he moved in (which would have been on or around December 12, 2001). During those six weeks the petitioner used electric heaters exclusively to heat the house.

7. After the furnace was repaired the petitioner found that it did not adequately heat the entire apartment by

itself, and he continued to use the electric heat with the gas furnace for the rest of the heating season.

8. In addition to heat, the petitioner uses gas for hot water, cooking, and to power his clothes dryer.

9. The record of gas usage for the past heating season submitted by the petitioner shows the following units and charges:

<u>Month</u>	<u>Units</u>	<u>Cost</u>
Nov. (9 days)	5	\$ 7.83
Dec. (32 days)	21	\$30.37
Jan. (33 days)	81	\$85.89
Feb. (30 days)	80	\$83.99
Mar. (27 days)	78	\$81.15
Apr. (31 days)	86	\$89.88
May (31 days)	50	\$56.47

10. From the above it appears that the petitioner's gas meter was read on November 9, 2001, and then about every 31 days thereafter. Based on the petitioner's representation that his gas furnace was not functioning until mid-December, it can be concluded that the petitioner's gas usage for items other than heat was about \$30 a month.

11. Thus, according to the above, subtracting \$30 from each month's usage after December it is concluded that the petitioner incurred expenses for gas heat from mid-December until mid-May of about \$248.

12. The record for the petitioner's electric usage shows the petitioner's electricity consumption is divided into an "initial block" of 200 units per month, for which he is charged about \$11 a month. He is then assessed an "energy charge" for usage above the amount of the initial block which is billed at about the same rate (about 10.5 cents per unit) year round. According to his electric bills, for the cycles ending in May and June 2002 the petitioner was billed about \$18 for energy charges in each of those months. Assuming that the petitioner did not use any electricity for heat in those months,² it is found that the petitioner incurs a "baseline" of about \$18 a month year round in energy charges for electric usage for purposes other than heat.

13. The petitioner's electric bills show that he was billed a total of about \$244 in energy charges for the six months November 2001 through April 2002. This is an average of about \$41 a month. Subtracting \$18 a month for non-heat electrical usage, it appears that the petitioner incurred energy charges of about \$138, or \$23 a month, for electric heat over this period.

² Based on the unusually cool spring and early summer it is also assumed that the petitioner did not use air conditioning in those months.

14. From the above it appears that during last winter the petitioner spent in excess of \$100 more on gas heat for five months than he did for electric heat for six months. Thus, it must be concluded that gas, not electricity, was and is the petitioner's primary source of heat.

ORDER

The decision of the Office of Home Heating Assistance of PATH is affirmed.

REASONS

The regulations governing the fuel program provide that a single person with a net income less than \$895 is financially eligible for benefits. P-2905 A. As noted above the petitioner is financially eligible based on his gross income of \$678.

Financial eligibility, however, is not the only test for receiving benefits. The regulations also require that a household have an obligation to pay a minimum amount of heating expense in relation to its income in order to receive benefits. 2906.2(c). Based on his income, the petitioner is eligible under the Department's regulations if he is liable for at least \$125 per year in heating costs. W.A.M. 2906.3.

The Department calculates a household's liability for fuel expenses, not through use of actual usage figures, but by means of a "Proxy Table" reflecting standing heating costs by the type (single or multi-family), size (by number of bedrooms) and type of heating fuel. W.A.M. 2906.2(a).

As noted above, the petitioner's primary source of heat is natural gas. Under the tables, for an individual who lives in a one-bedroom apartment that is heated primarily by natural gas the annual heating figure is \$412. W.A.M. 2906.4. The regulations provide further that persons who live in subsidized housing have further reductions calculated as follows:

Each household living in subsidized housing will have its annual primary heating fuel costs reduced by an annualized standard heating subsidy deduction prior to determining the percentage of heating costs to be met by the Fuel Program. This standard is derived from Housing and Urban Development (HUD) heating subsidy amounts, called allowance by HUD, which are developed by the Vermont State Housing Authority and are specified by housing type, fuel type, and number of bedrooms. These subsidy amounts are located in the Standard Heating Subsidy Tables in the Fuel Program section of the welfare procedures manual.

W.A.M. 2906.1

For the petitioner the standard heating subsidy figure is \$312 per month (one bedroom, multi-family dwelling with propane gas). P-2905 C. The regulations require that this

figure must be used to reduce the annual heating cost to obtain a "net annual fuel cost." W.A.M. 2906.2(b). The petitioner's "net annual fuel cost" (\$412-\$312) is \$100. Unfortunately, the regulations make no provision for energy inefficient homes or the amount of time residents must spend in the home due to illness or disability.

As stated above, the petitioner must have a minimum net fuel cost figure of at least \$125 under the tables in order to be eligible for the payment of any benefits. W.A.M. 2906.2(c). As the petitioner's cost under the tables is only \$100, the Department was correct in its determination that the petitioner cannot receive heating assistance under the regular fuel program for last winter. The Board is thus bound to affirm the Department's decision. 3 V.S.A. § 1391(d), Fair Hearing Rule 17.

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